

# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Summary

### Introduction:

This section describes actions WISHA takes during or after inspections, and your related obligation and rights.

### YOUR RESPONSIBILITY:

You must follow posting requirements and notify your employees of the information listed in these rules, as indicated.

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# WISHA Appeals, Penalties, & Other Procedural Rules

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WISHA Appeals, Penalties,  
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# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

### WISHA Inspection and Citations

WAC 296-800-35002

#### Types of workplace inspections

- WISHA conducts the following types of inspections:
  - Programmed inspections of hazardous workplaces.  
WISHA identifies hazardous workplaces using objective criteria and inspection-scheduling systems that may look at any of the following factors:
    - Type of industry
    - Available data of injuries and illnesses where an inspection might eliminate the hazards causing them
    - Employer's industrial insurance experience
    - Number, type, and toxicity of contaminants in the workplace
    - Degree of exposure to hazards
    - Number of employees exposed
    - Other factors, such as history of employee complaints.
  - WISHA periodically reviews the scheduling systems and may adjust the factors used and/or the weight given to each factor
  - **Routine programmed inspections** in the following high hazard industries:
    - Agriculture
    - Asbestos renovation and demolition
    - Construction
    - Electrical utilities and communications
    - Logging
    - Maritime.

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1-800-4BE-SAFE (1-800-423-7233)



# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

### WAC 296-800-35002 (Continued)

- Unprogrammed inspections of workplaces that may be in violation of WISHA safety or health rules or Chapter 49.17 RCW, the Washington Industrial Safety and Health Act. Unprogrammed inspections may result because of:
  - Complaints from employees, former employees, or employee representatives who believe they have been exposed to a hazard because of a violation.
  - Referrals from anyone who reasonably believes that workers under WISHA jurisdiction are being or have been exposed to a hazard because of a violation.
- Workplace deaths and serious injuries or illnesses investigations to determine if they were caused by a violation of safety and health rules or chapter 49.17 RCW, the Washington Industrial Safety and Health Act. WISHA may also initiate comprehensive inspections based on such investigations.
- Imminent danger of serious injury or death inspections when there is a reason to believe that employees may be in imminent danger of serious injury or death.
- Follow-up inspections at later dates to verify that you have corrected any hazards identified in a citation.

### WAC 296-800-35004

#### Scheduling inspections

- WISHA distributes staff performing inspections as efficiently as possible to ensure maximum protection for workers.



# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

WAC 296-800-35006

### Inspection techniques

- During an inspection, WISHA staff may:
  - Take samples, photographs, videotapes, or audiotapes
  - Conduct tests
  - Ask employees to wear sampling devices
  - Conduct interviews
  - Privately question, on or off the worksite, any:
    - Employer
    - Employer representative
    - Owner
    - Operator
    - Employee
    - Employee representative.
  - Employ any other reasonable investigative techniques.

WAC 296-800-35008

### Response to complaints submitted by employees or their representatives

- When an employee or their representative has filed a complaint, WISHA will:
  - Remove the name of the person submitting the complaint and the names of any employees identified in the complaint before giving a copy of the complaint to an employer, unless the person filing the complaint gives WISHA written permission to release the names involved.
  - Give a copy of the Citation and Notice to the employee (or their representative) who submitted the complaint, or explain to them why an inspection was not conducted.

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1-800-4BE-SAFE (1-800-423-7233)





# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

### WAC 296-800-35008 (Continued)

- Review any department decision refusing to inspect or cite violations alleged in a complaint, if requested in writing.
- Notify the person in writing of the review results. If the person requesting the review is not satisfied with the results, they may request a second review by the Department.

### WAC 296-800-35010

#### Citations mailed after an inspection

- After an inspection or an investigation, WISHA will mail a citation to you within 6 months following the inspection or investigation.
- The citation will include:
  - A description of any violations found
  - The amount and type of assessed penalties
  - The length of time given to correct the violations.
- If no violations are found, WISHA will normally send you a Citation and Notice indicating that no violations were found.



#### Note:

- Copies of WISHA safety and health inspection reports can be requested. The request should be mailed to:  
DEPARTMENT OF LABOR AND INDUSTRIES  
PUBLIC DISCLOSURE UNIT  
P.O. BOX 44632  
OLYMPIA WA 98504-4632
- You can also contact your local Labor and Industries field office for information on requesting copies of inspection reports (see the Resource Section of this book).



# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

WAC 296-800-35012

### Employees (or their representatives) can request a Citation and Notice

- Employees or their representatives may request copies of Citation and Notices issued to the employer.
  - Complete the Request for Copy of Citation and Notice form, and mail it to:  
DEPARTMENT OF LABOR AND INDUSTRIES  
STANDARDS AND INFORMATION  
P.O. BOX 44638  
OLYMPIA WA 98504-4632



#### Note:

- To obtain a copy of the Request for Copy of Citation and Notice form, call 360-902-5534, or contact your local Labor and Industries office (see the Resource Section for a complete list of the offices.)
- If you submit this form, you'll receive all Citation and Notices issued to that employer for the next 12 months.
  - When the Department approves the request for a copy of a Citation and Notice, WISHA will indicate the date the application is approved, and the date it expires. Once approved, your application is valid for one year. Once expired, a one-year extension may be requested.
  - You can waive the one-year period when you make your initial request.
  - If more than one employee representative requests a copy of the same Citation and Notice, the Department may decide which person will receive the copy of the Citation and Notice.
- The Department can deny requests for copies of Citation and Notices if the person filing the request is not an employee representative.



# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

WAC 296-800-35016

### Posting a Citation and Notice and employee complaint information

You must:

- Immediately notify your employees of a citation and notice by posting them and/or any correspondence related to an employee complaint on the safety bulletin board for 3 working days, or until all violations have been corrected, whichever is longer.
- Use any other appropriate means to notify employees who cannot receive notices posted on the safety bulletin board; for example, a copy to authorized employee representatives or the safety committee, or copies sent electronically.

### Civil Penalties for Violating WISHA Requirements

WAC 296-800-35018

### Reasons to assess civil penalties

- WISHA may assess civil penalties when a citation and notice is issued for any violation of health and safety rules, or statutes found during an inspection.
- WISHA will assess civil penalties:
  - When a citation for a serious violation is issued.
  - Under other circumstances specified by statute (such as RCW 49.17.180, 49.26.016, 49.17.177, 49.70.190).
- Civil penalties promote compliance, encouraging employers to correct violations before an inspection takes place and avoiding the risk of receiving a penalty assessment. Civil penalties help promote a level playing field for employers complying with the rules by assessing penalties for those who do not comply.



# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

WAC 296-800-35020

### Minimum penalties

- The minimum penalty amounts assessed by WISHA are:
  - \$100 for any penalty
  - \$5,000 per violation for all willful violations.

## How Civil Penalties are Calculated

WAC 296-800-35022

### Base penalty calculations--Severity and probability

- Except for specific penalty amounts that are dictated by statute, WISHA calculates the base civil penalty for a violation by evaluating:
  - The severity of the injury, illness, or disease that could result from the alleged hazard.
  - The probability that an injury, illness, or disease could occur as a result of the alleged hazard.

WAC 296-800-35024

### Severity rate determination

- Severity describes how serious an injury, illness, or disease might be because of a hazardous condition. Severity ratings are based on the most serious injury, illness, or disease that could be reasonably expected to occur because of a hazardous condition (see Table 1).
- Severity ratings are expressed in whole numbers and range from 1 (lowest) to 6 (highest). A violation with a severity rating of 4, 5, or 6 is considered to be a serious violation.

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# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

WAC 296-800-35024 (Continued)

TABLE 1: SEVERITY RATINGS

Severity	Most serious injury, illness, or disease likely to result in:
6	Death from injury, illness or disease; injuries involving permanent severe disability; chronic, irreversible illness.
5	Permanent disability of a limited or less severe nature, injuries or reversible illnesses resulting in hospitalization.
4	Injuries or temporary, reversible illnesses resulting in serious physical harm (but less than 5 or 6 above) and may require removal from exposure or supportive treatment without hospitalization for recovery.
3	Injuries or illness would probably not cause death or serious physical harm, but violations have at least major impact and an indirect relationship to serious injury, illness or disease. Violations could have direct and immediate relationship to safety and health of employees. No need for medical treatment beyond first aid.
2	Non-serious or general violations of minor impact, including violations that have an indirect relationship to non-serious injury, illness or disease. No injury, illness or disease without additional violations.
1	No injury, and not likely to result in injury in the presence of other violations.

WISHA Appeals, Penalties,  
& Other Procedural Rules



# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

WAC 296-800-35026

### Probability rate determination

- Probability refers to the likelihood of an injury, illness or disease occurring, and is expressed in whole numbers ranging from 1 (lowest) to 6 (highest). Probability does not change severity.
- When determining probability, WISHA considers the number of employees affected and other factors, depending on the situation. Other factors may include:
  - Frequency of employee exposure .
  - Instances (number of times the same violation occurs in the workplace).
  - How close an employee is to the hazard.
  - Weather and other working conditions.
  - Employee skill level.
  - Employee awareness of the hazard.
  - The pace, speed, and nature of the task or work.
  - Use of personal protective equipment.
  - Amount of exposure (for health violations).
  - Other mitigating or contributing circumstances.



# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

WAC 296-800-35028

### Determining the gravity of a violation

- WISHA calculates most base penalties by assigning a weight to a violation. This weight is called "gravity." Gravity is calculated by multiplying a violation's severity by its probability. Expressed as a formula, gravity is:  $\text{Gravity} = \text{Severity} \times \text{Probability}$ .
- Unless a particular rule establishes penalty amounts for specific violations, WISHA uses Table 2 to determine the dollar amount for each base penalty.

Table 2: Penalty Amount Using Gravity

Gravity	Base Penalty
1	\$100
2	\$200
3	\$300
4	\$400
5	\$500
6	\$1000
8	\$1500
9	\$2000
10	\$2500
12	\$3000
15	\$3500
16	\$4000
18	\$4500
20	\$5000
24	\$5500
25	\$6000
30	\$6500
36	\$7000

WISHA Appeals, Penalties,  
& Other Procedural Rules



# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

WAC 296-800-35030

### Base penalty adjustments

- WISHA may adjust an employer's base penalty amount because of the good faith effort, size, and compliance history. No adjustments are made to penalty amounts specified by statute.

WAC 296-800-35032

### Types of base penalty adjustments

#### Employer's Good Faith

- An employer's good faith effort (or lack of) may justify increasing or decreasing a base penalty. No single factor determines good faith. Good faith is a reflection of an employer's:
  - Effort before an inspection to provide a safe and healthful workplace for employees.
  - Effort to comply with a standard they have violated.
  - Cooperation during an inspection that is measured by a desire to comply with the cited standard and immediately correct identified hazards.
- WISHA uses Table 3 to adjust base penalty amounts because of good faith effort.

TABLE 3: GOOD FAITH ADJUSTMENTS

<u>Good Faith Rating</u>	<u>Adjustment to Base Penalty</u>
Excellent	35% reduction
Good	20% reduction
Average	No adjustment
Poor	20% increase

—Continued—





# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

WAC 296-800-35032 (Continued)

### Employer's Work Force Size

- WISHA may adjust base penalties due to the size of an employer's work force in the State of Washington by using Table 4.

TABLE 4: SIZE ADJUSTMENTS

<u>Number of Employees</u>	<u>Adjustment to Base Penalty</u>
1-25	60% reduction
26-100	40% reduction
101-250	20% reduction
More than 250	No adjustment

### Employer's Compliance History

- WISHA may adjust a base penalty based on an employer's history of safety and health violations in the State of Washington, using previous citations as well as injury and illness rates (see Table 5).

TABLE 5: HISTORY ADJUSTMENTS

<u>History Rating</u>	<u>Adjustment to Base Penalty</u>
Good	10% reduction
Average	No adjustment
Poor	10% increase

WAC 296-800-35038

### Maximum base penalty amount

- The maximum penalty for a violation other than repeat, willful, egregious or failure-to-abate is \$7,000.



# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

WAC 296-800-35040

### Reasons for increasing civil penalty amounts

- WISHA may increase civil penalties by applying a multiplier to an adjusted base penalty. Multipliers may be applied for the following reasons:
  - Repeat Violations:

A repeat violation occurs when WISHA cites an employer more than once in the last 3 years for a substantially similar hazard.

    - The 3-year period is measured from the date of the final order for each previous citation.
    - The adjusted base penalty will be multiplied by the total number of inspections with violations (including the current inspection with a violation) involving similar hazards.
    - The maximum penalty cannot exceed \$70,000 for each violation.
  - Willful Violations:

A willful violation is a voluntary action done either with an intentional disregard of, or plain indifference to, the requirements of the applicable WISHA rule(s).

    - For all willful violations, the adjusted base penalty will be multiplied by 10.
    - All willful violations will receive at least the statutory minimum penalty of \$5,000.
    - The maximum penalty cannot exceed \$70,000 for each violation.

For example: When management is aware that employees are resistant to following specific WAC rule(s); employee resistance results in imminent danger situation or a serious violation; and management fails to make efforts that are effective in practice to overcome the resistance, then WISHA will presume that the failure constitutes voluntary action.

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# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

### WAC 296-800-35040 (Continued)

#### – Egregious Violations:

An egregious violation may be issued for exceptionally flagrant cases involving willful violations. In these cases, WISHA will issue a separate penalty for each instance of an employer failing to comply with a particular rule.

#### – Failure-to-Abate Violations:

A failure-to-abate violation occurs when an employer who has been cited for a WISHA violation, fails to correct the violation on time (certifying corrected violations is covered in WAC 296-800-35200 through 296-800-35270).

- The maximum penalty cannot exceed \$7,000 for every day the violation is not corrected.
- For a general violation with no initial penalty, the minimum failure-to-abate penalty is \$1,000, with a possible adjustment for the employer's effort to comply.
- For violations with an initial penalty, WISHA, based on the facts at the time of reinspection:
  - Will multiply the adjusted base penalty by 5, but may possibly make adjustments for the employer's effort to comply.
  - May multiply the adjusted base penalty by the number of days past the correction date if the employer does not make an effort to comply.



# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

Certify that Violations have been Abated

WAC 296-800-35042

Employers must certify that violations have been abated

You must:

- Certify within 10 calendar days following the correction date that you have abated each violation, unless the compliance officer indicates in your citation and notice that you have corrected the violations. Include the following:
  - Your name and address.
  - The inspection number your written statement applies to.
  - The citation and item numbers your written statement applies to.
  - The date and method you used to abate each violation.
  - That you informed your affected employees and their representatives that each violation was corrected.
  - That the information you submitted is accurate.
  - Your signature or the signature of your authorized representative.



# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

WAC 296-800-35044

For willful, repeated, or serious violations, submit additional documentation

You must:

- Submit additional documentation for each willful or repeated violation supporting that abatement is completed. This documentation may include, but is not limited to:
  - Evidence of the purchase, or repair, of equipment.
  - Photographic or video evidence of corrections.
  - Other written records.
- Submit additional documentation for a serious violation, when required by the citation and notice.

WAC 296-800-35046

Submitting correction action plans

You must:

- Submit a correction action plan within 25 calendar days from the final order date if the Citation and Notice requires it. Your plan must:
  - Identify the violation
  - List the steps you will take to correct the violation.
  - Include a schedule to complete the steps.
  - Describe how employees will be protected until the corrections are completed.

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WISHA Appeals, Penalties,  
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# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

WAC 296-800-35046 (Continued)



Note:

- The Department will notify you in writing if there is anything inadequate about your plan and will work out the problems.
- When determining if required documents are submitted on time, the Department looks at the postmark date for documents sent by standard mail and the date received by other means, such as personal delivery or fax.

WAC 296-800-35048

[Submit progress reports to the Department when required](#)

You must:

- Submit progress reports on the abatement if the Citation and Notice requires it and briefly state (a single sentence is normally adequate for each violation):
  - The action taken to abate each violation.
  - The date each action was taken.



Note:

If progress reports are required, the Citation and Notice will include:

- The items for which periodic progress reports are required.
- The date when an initial progress report must be submitted (no sooner than 30 calendar days after you submit a correction plan).
- Whether additional progress reports are required.
- The date(s) on which additional progress reports must be submitted.



# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

WAC 296-800-35049

WISHA determines the date by which abatement documents must be submitted

- When determining if required documents are submitted on time, the Department looks at:
  - Date of postmark for documents sent by mail.
  - Date the Department receives the documents, if transmitted by a means other than mail.

WAC 296-800-35050

Inform affected employees and their representatives of abatement actions you have taken

You must:

- Post a copy of each abatement action document you submit to the Department (or a summary) near the place where the violations occurred, if practical.
- Do the following if posting near the violation site is not practical, such as with a mobile work operation:
  - Post each document (or a summary) in a location that is readily accessible by affected employees and their representatives.
  - Take other steps to fully communicate abatement actions to affected employees and their representatives.

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WISHA Appeals, Penalties,  
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# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

### WAC 296-800-35050 (Continued)

- Make sure that:
  - Notice is given to your employees and their representatives on or before the date you submit abatement information to the department.
  - All abatement documents remain posted for at least 3 working days after they are submitted to the department.
  - All posted abatement documents are not altered, defaced, or covered by other materials.
- Inform employees and their representatives of their right to examine and copy all abatement documents you submit to the department. If they ask to examine or copy your documents within 3 working days of receiving notice that you submitted them to the Department, you have 5 days to comply with their request after receiving it.

### WAC 296-800-35052

#### Tag cited moveable equipment to warn employees of a hazard

#### You must:

- Tag cited moveable equipment to warn employees of a hazard if it has not been abated.
  - Attach a warning tag or a copy of the citation to the equipment's operating controls or to the cited component:
    - For hand-held equipment, tag it immediately after you receive a citation.
    - For other equipment, tag it before moving it within the worksite or between worksites.
    - The tag should properly warn employees about the nature of the violation and tell them where the citation is posted (see the Helpful Tools Section for a sample tag that can be used to meet this requirement).

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# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

### WAC 296-800-35052 (Continued)

- Make sure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other materials
- Make sure that the tag or copy of the citation attached to movable equipment remains attached until:
  - You have abated the violation and submitted all abatement certification documents required by the department.
  - You have permanently removed the cited equipment from service.
  - You no longer have control over the cited equipment.
  - A final order sets aside the violation.



#### Note:

Chapter 296-155 WAC, Safety Standards for Construction Work and Chapter 296-24 WAC, General Safety and Health Standards have information on warning tags. You can use warning tags that meet the requirements in those rules instead of the warning tags required by this rule.



# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

Requesting more Time to Comply

WAC 296-800-35056

You can request more time to comply

- You can request more time to comply if you:
  - Have made a good faith effort to comply with a citation's abatement requirements.
  - Have not completed your abatement because of factors beyond your control.
- Requests for more time must:
  - Be submitted in writing by you or your representative, and include:
    - The name of your business.
    - The address of the workplace(s).
    - Identification of the citation and the abatement date(s) you want extended.
    - The new abatement date and length of abatement period you are seeking.
    - A description of the actions you have taken to comply with the abatement date(s) in the citation.
    - Identification of the factors beyond your control that are preventing you from complying with the abatement date(s).
    - The means you will use to protect your employees during the time you are abating the violation.
  - Be received before midnight of the date you are asking to be extended.

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# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

### WAC 296-800-35056 (Continued)

- The Department may accept late requests if they are:
  - Received within 5 days following the applicable correction date
  - Accompanied by your written statement explaining the exceptional circumstances that caused the delay.
- The assistant director may respond to a request received by telephone or personal conversation if the request is timely.



**Note:**

The Department does not accept late requests when compliance activity related to the abatement starts before the request is received.

- The Department accepts requests by:
  - First class mail postage prepaid. Mailed to:  
DEPARTMENT OF LABOR AND INDUSTRIES  
WISHA APPEALS  
P.O. BOX 44604  
OLYMPIA WA 98504-4632
  - Personal delivery
  - Fax: (360) 902-5581



# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

WAC 296-800-35062

### WISHA's response to your request for more time

- Within 5 working days of receiving your request for more time to comply, the Assistant Director must make a decision to approve or deny it. Before making a decision, the Assistant Director may conduct an investigation. Once made, the decision remains in effect unless a hearing is requested.
- The Assistant Director must issue the following 3 notices (which can be combined into one):
  - A notice verifying that your request was received, including the correction dates listed in your citation
  - A notice of your right to request a hearing on the decision
  - A notice announcing the decision.
  - These notices must:
    - Be signed by the Assistant Director,
    - Contain the date they were issued, and
    - Include the address to which a hearing request may be sent.

WAC 296-800-35063

### Post the Department's response

You must:

- Post notices with the citation for which you are requesting additional abatement time immediately upon receipt. The notices must remain posted until:
  - The abatement date has passedOR
  - A hearing notice is posted.



# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

WAC 296-800-35064

### A hearing can be requested about the Department's response

- You, your affected employees, or their authorized representative, may request a hearing if they disagree with the Department's response to a request for more time to comply.
- All hearing requests must be sent or delivered to the Assistant Director and be received at the address identified in the notice of your right to request a hearing no later than 10 calendar days after the issue date of the notice.
- Upon receiving a hearing request, the Assistant Director will issue a Notice of Hearing to the requesting party and the employer at least 20 days before the hearing date. The hearing notice will:
  - State that all interested parties can participate in the hearing.
  - Set the time and date, including:
    - the time, place, and nature of the proceeding,
    - the legal authority and jurisdiction under which the hearing will be held,
    - a reference to the particular sections of the statute and rules involved, and
    - a short and clear explanation why a hearing was requested.
- The employer must post the Department's hearing notice or a complete copy until the hearing is held. This includes the:
  - Citation containing the correction date for which more time was requested
  - Department notices issued in response to the employer's request for more time.



# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

WAC 296-800-35065

### Post the Department's hearing notice

You must:

- Post the Department's hearing notice or a complete copy until the hearing is held. This includes the:
  - Citation containing the correction date for which more time was requested.
  - Department notices issued in response to the employer's request for more time.

WAC 296-800-35066

### Hearing procedures

- The Assistant Director for WISHA services will appoint someone from the Department to act as a hearings officer.
- The hearings officer must be present at, and conduct, the hearing. An Assistant Attorney General may be present to give legal advice to the hearings officer.
- If the hearings officer requests, the Assistant Attorney General may conduct the hearing.
- The hearings officer may discuss the material to be presented to determine how the hearing will proceed.
- The hearing must be conducted according to the Administrative Procedure Act. Copies of hearing transcripts will be available to the parties, at cost, upon request.



# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

WAC 296-800-35072

### Post the hearing decision

- After the hearing, the Assistant Director will issue an order:
  - Affirming or modifying the correction date that caused the hearing**AND**
  - Complying with the provisions of the Administrative Procedure Act, Chapter 34.05 RCW and the Practice and Procedure Rules, Chapter 296-08 WAC.

You must:

- Post a complete, unedited copy of this decision, along with the citation to which it applies, as soon as it is received.

Requesting an Appeal of WISHA Citations and Corrective Notices

WAC 296-800-35076

### Employers and employees can request an appeal of a Citation and Notice

#### EMPLOYER REQUESTS

- Any employer cited for a violation of WISHA safety and health rules may appeal a citation or corrective notice.
- Your request must include:
  - Business name, address, telephone number; and the name, address and telephone number of any person representing you.
  - Citation number.
  - What you think is wrong with the citation or corrective notice and any related facts.
  - What you think should be changed, and why.

<http://www.lni.wa.gov/wisha>

WISHA Appeals, Penalties,  
& Other Procedural Rules



**350-31**

# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

### EMPLOYEE REQUESTS

- Any employee or employee representative who could be affected by a citation or its correction may appeal the abatement date in the citation or corrective notice.
- Your request must include:
  - Your name, address, telephone number, and the name, address and telephone number of any person representing you.
  - Citation number.
  - What you think is wrong with the abatement date.

### SUBMITTING APPEAL REQUESTS

- All appeal requests must be in writing and submitted to the Department within 15 working days after receiving the citation corrective notice. If you mail your request, the postmark is considered the submission date.
- All requests must be:
  - Mailed to:  
DEPARTMENT OF LABOR AND INDUSTRIES  
WISHA APPEALS  
P.O. BOX 44604  
OLYMPIA WA 98504-4632  
OR
  - Faxed to: (360) 902-5581  
OR
  - Brought to any Department service location.





# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

WAC 296-800-35078

### Await the Department's response to your appeal request

- When an appeal request is received, the Department decides whether to reassume jurisdiction over the Citation and Notice being appealed or forward the appeal to the Board of Industrial Insurance Appeals. The Department will notify the person who submitted the appeal when the Department reassumes jurisdiction.



#### Definition:

Reassume jurisdiction means that the Department has decided to hear the appeal.

- The Department may reassume jurisdiction to:
  - Provide an employer and affected employees an opportunity to present relevant information, facts, and opinions during an informal conference.
  - Give an employer, affected employees and the Department an opportunity to resolve appeals rapidly and without further contest, especially in routine compliance cases.
  - Educate employers about the Citation and Notice, the WISHA appeals process, and WISHA compliance.
  - Review citations, penalties, and correction dates for fairness and accuracy to ensure quality work by the Department.
- If the Department does not reassume jurisdiction, it will send the appeal to the Board of Industrial Insurance Appeals. The board will send the person submitting the appeal a notice with the time and location of any board proceedings.



# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

WAC 296-800-35080

### Department actions when reassuming jurisdiction over an appeal

- The Department has 30 working days after receipt of the appeal to review it, gather more information and decide whether to make changes to the Citation and Notice. The 30 working days begin with the first working day after the appeal is received. For example, if an appeal is received on Friday, the 30 days will begin on the following Monday unless it is a state holiday.
- The Department may extend the appeal review period up to an additional 15 working days if everyone involved agrees to the extension.
- During the review period, the Department will hold an informal conference about the appeal.
  - An informal conference is not an evidentiary hearing. It is an opportunity for interested parties to briefly explain their positions and provide any additional information they would like the Department to consider when reviewing the Citation and Notice.
  - Although informal, the conference is an official conference and the Department may record all or part of it. The Department will tell participants when the conference will be recorded.
- After the review period, the Department will issue a corrective notice reflecting any changes made to the Citation and Notice. This notice will be sent to the employer and any employee representatives participating in the appeal process.

WAC 296-800-35082

### Appealing a corrective notice

- Anyone who can appeal a Citation and Notice may appeal a corrective notice. All corrective notice appeals must be submitted within 15 working days after the notice was received.



# WISHA Appeals, Penalties, & Other Procedural Rules

WAC 296-800-350

## Rule

WAC 296-800-35084

### Notify employees

You must:

- Immediately post all correspondence from the Department in a conspicuous place after submitting an appeal. This correspondence includes:
  - The notice of appeal
  - The notice explaining that the Department reassumed jurisdiction over the Citation and Notice
  - Any extensions to the review period
  - The notice for an informal conference
  - Corrective notices.
- Post all notices and information related to the appeal in the place where WISHA Citations and Notices are posted (see WAC 296 -800-35150). These include:
  - A notice of appeal until the appeal is resolved.
  - Notices about the Department reassuming jurisdiction and any extension of the review period until the end of review period.
  - A notice of an informal conference until after the conference is held.
  - Corrective notices for as long as Citations and Notices must be posted.
  - Requesting alternate means of compliance with WISHA rules.



#### Note:

If you wish to develop an alternate means of compliance with WISHA rules, you may do so by following the instructions in WAC 296-350-700, Variances from WISHA rules.

- In certain circumstances, the Department allows an employer to vary from a specific WISHA safety and health standard if the employer uses Department-approved substitute measures to protect employees. The substitute measure must provide at least the same protection from workplace hazards as provided by the WISHA standard.



# Notes

